Workplace Safety and Insurance Appeals Tribunal

QUARTERLY REPORT

Production and Activity

For the Period
April 1 through June 30, 2003

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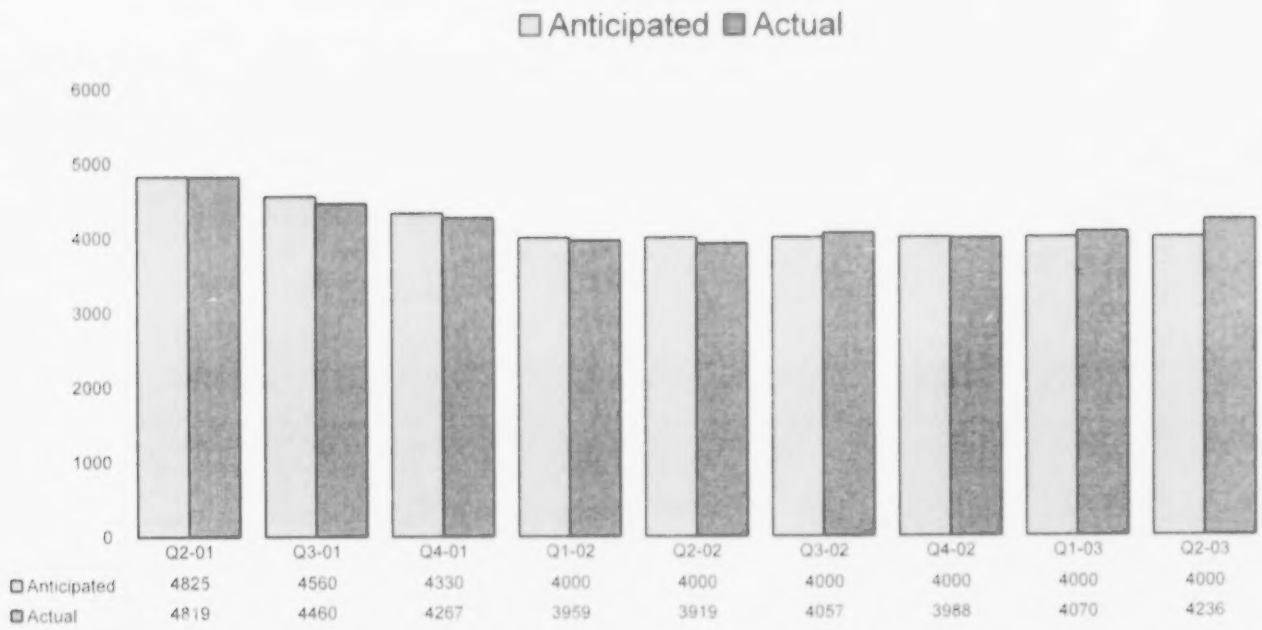
The Quarterly Report

Key Tribunal Activities

A) Tribunal Production

Productivity in Relation to Case Management Objectives



	Q2-01	Q3-01	Q4-01	Q1-02	Q2-02	Q3-02	Q4-02	Q1-03	Q2-03
Anticipated	4825	4560	4330	4000	4000	4000	4000	4000	4000
Actual	4819	4460	4267	3959	3919	4057	3988	4070	4236

Figure 1. Appeals Inventory. Anticipated vs. Actual

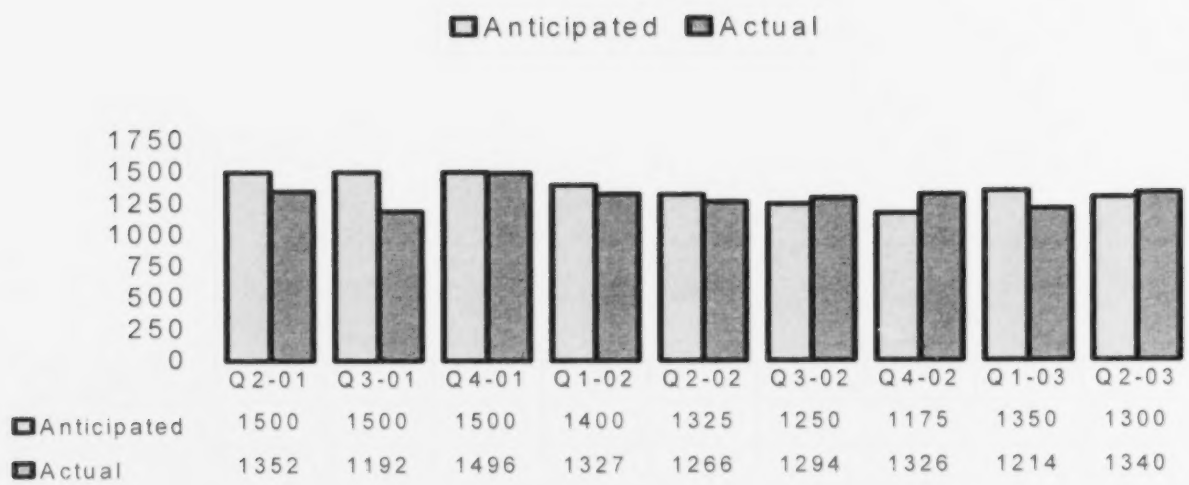


Figure 2. Incoming Appeals, Anticipated vs. Actual

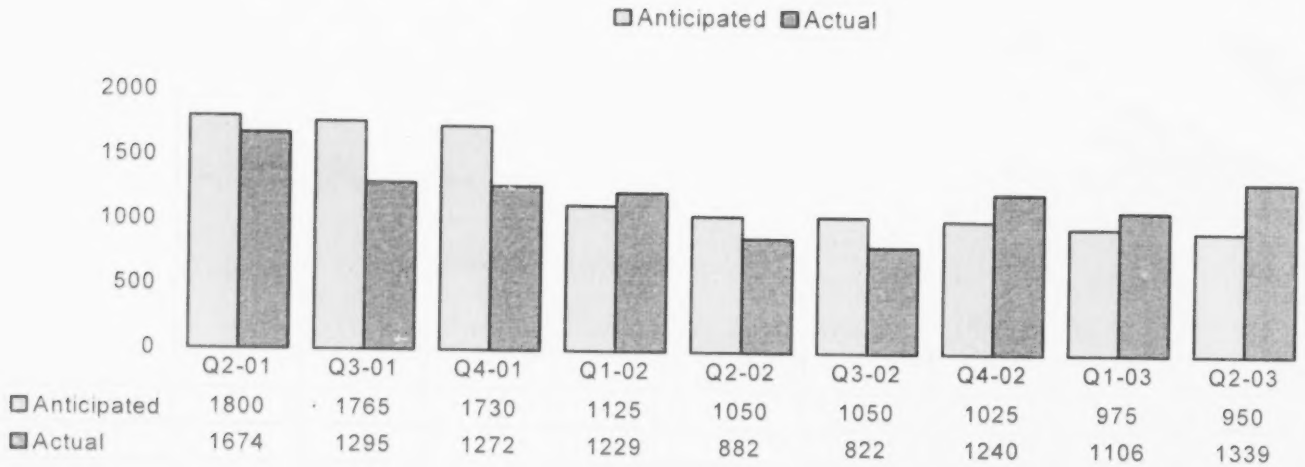


Figure 3. Dispositions, Anticipated vs. Actual

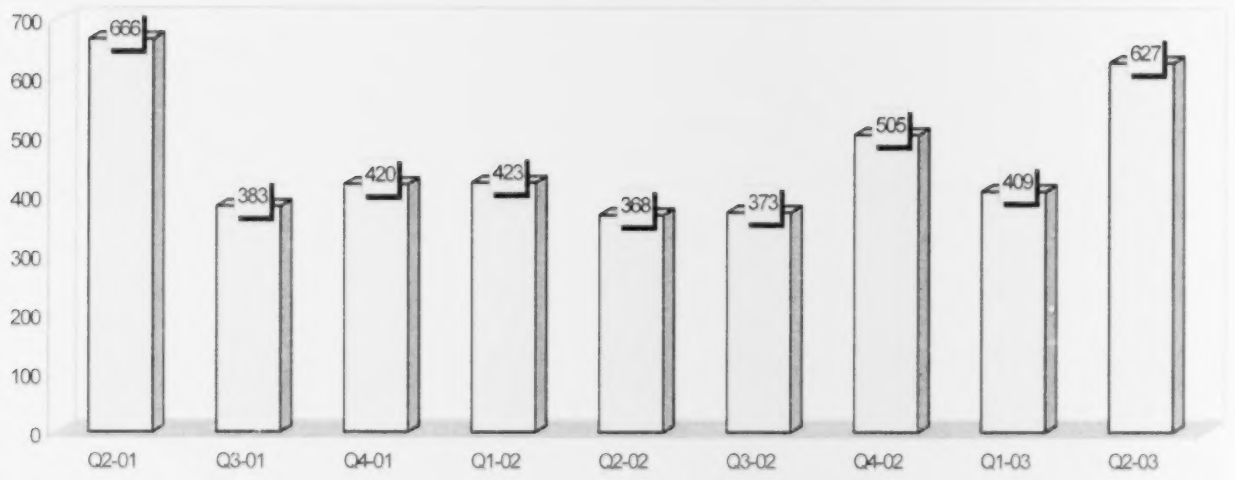


Figure 4. Dispositions from Pre-Hearing processes, including ADR

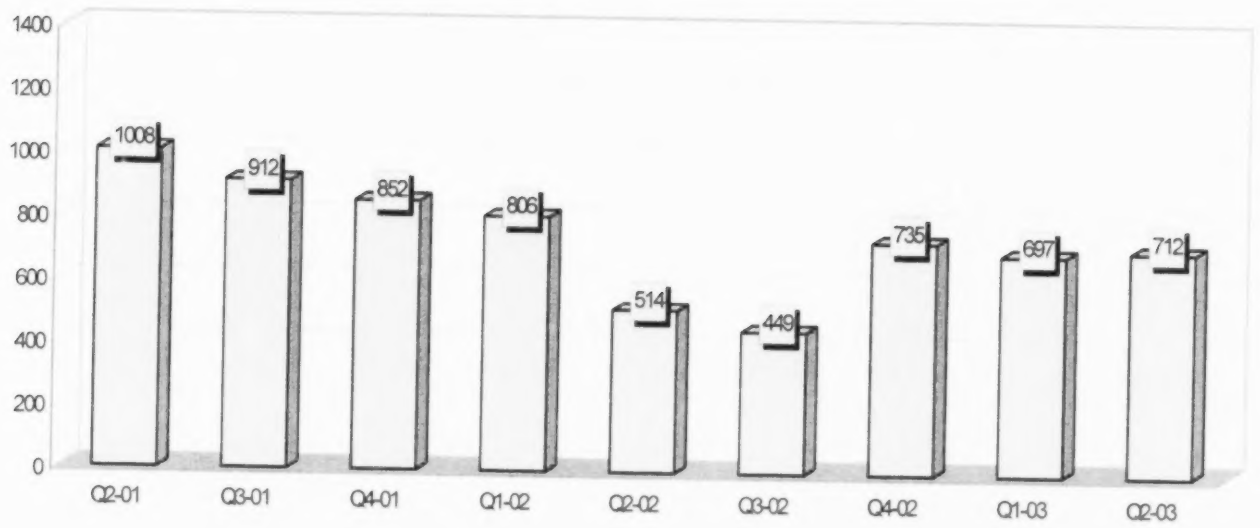
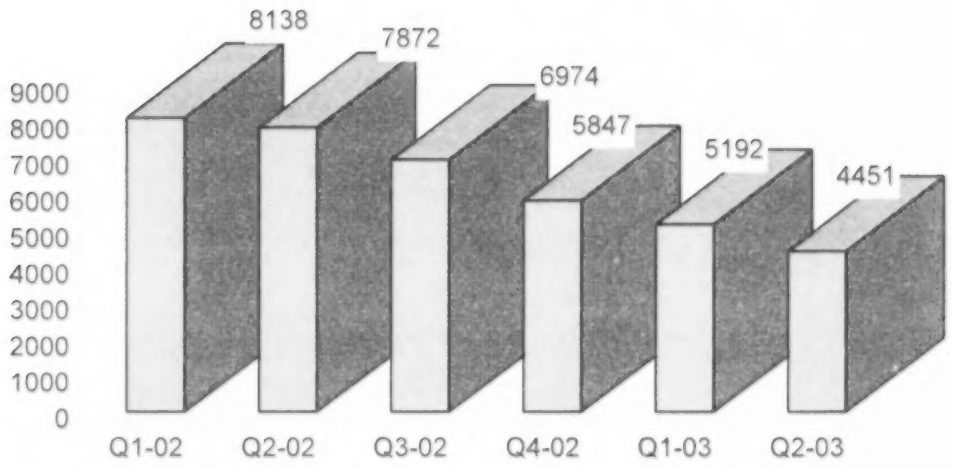


Figure 5. Dispositions from After Hearing processes.

Inactive Inventory. At the close of the second quarter 2003, the Tribunal's inactive inventory numbered 4,451, a reduction of 741 cases from the previous quarter.

During the 2nd quarter, 261 appellants contacted the Tribunal to continue or re-activate their appeal, representing 26% of the previous quarter's inactive inventory of 5,192. During the quarter, 193 of the reactivations resolved cases in the inactive inventory (reduction impact). Reactivations are taken into account in the Tribunal's business planning, and excessive reactivations are accounted for in projecting the incoming appeals. In the second quarter of 2003 reactivations numbered 231 cases.

Inactive status was created in 1997 as a case management approach to provide appellants with time to prepare their cases prior to hearing. This process is subject to the Tribunal's Practice Direction on Inactive Files. This is the 6th quarter where the reach of inactivity has decreased. Over 74% of the inactive cases are over 2 years old. At the end of 2002, the Tribunal reported that 80% of cases in inactive status were over 2 years old. It is unlikely that these appellants are planning to proceed with their appeal.



Inactive Inventory Q1 2002 to Q2 2003

B) Communications

C) WSIAT/WSIB Activities

D) Judicial Review Activity

Fifteen years later, the worker brought an application for judicial review of these two decisions. The worker has filed a Factum and Record. At the end of the second quarter, the Tribunal was preparing its materials.

E) Highlights of Decided Cases

Departure fees: *Decision No. 3198/00I* concerned an employer wishing to terminate Schedule 1 coverage who was informed that a departure fee would be levied. The departure fee is a supplementary premium for the final year of coverage that ensures that all the remaining financial obligations of the employer are met. The employer is appealing the decision that confirmed the departure fee. The Panel considered the issue of the Tribunal's jurisdiction in relation to that decision: on the one hand the departure fee could be interpreted as a premium or penalty, appealable under s. 123(1)(b); on the other hand it could be viewed as a Board action to maintain the insurance fund, not appealable (section 123(1)(a)). The Panel adopted the former view noting that the provision granting jurisdiction to the Tribunal in s. 123(1) should be interpreted broadly and that the provision limiting jurisdiction, s. 123(2), should be interpreted narrowly. The Panel also observed that Board policy refers to the departure fee as a supplementary premium. The Panel noted that the intent of s. 123(2) is in limiting the Tribunal's ability to question the assessment and quantum of claims in the excluded sectors but not prohibit appeal to how the terms of the plans are applied to individual employers. In accordance with that intent the Panel determined that the Tribunal does not have jurisdiction to consider the departure fee amount, but does have jurisdiction over the application of the system in specific instances.

Exposure to 2nd hand smoke: A bartender was granted benefits for one week for aggravation of pre-existing asthma as a result of exposure to second-hand smoke, further temporary benefits and an award for permanent impairment were denied. The worker had been a heavy smoker, one pack a day habit, for 21 years but had stopped smoking in 1978. In *Decision No. 1883/00* the Panel found that the worker's permanent impairment was caused by the worker's personal history of smoking and pre-existing asthma condition, but that the pre-existing condition was aggravated by the triggering exposure to second hand smoke. The worker's condition returned upon contact with the smoky environment. The Panel considered the issue of loss of earning capacity through he did find other work elsewhere. The Panel therefore concluded that the worker was entitled to further temporary benefits but not to an award for his permanent impairment.

Attendance at hearing: In *Decision No. 497/00*, an appeal for entitlement for chronic pain, the Vice-Chair found that medical reports from a specialist in physical medicine and rehabilitation stating that the worker was unable to testify in a court-like setting were insufficient to support a finding that the worker should not testify in the appeal. The Vice-Chair noted that the reports were not prepared by a treating psychiatrist or psychologist, nor did they indicate that the worker was unable to attend the hearing. The reports did indicate, however, that the worker required several days to prepare before going to the bank about once a month; the Vice-Chair inferred that the same could be done for the Tribunal hearing. The Vice-Chair further noted that the Tribunal setting and procedures are not like a courtroom. Finally, the Vice-Chair concluded that the hearing should proceed orally but that the scheduling should provide flexibility to the worker.

In *Decision No. 3091/00*, a stress-related disability appeal the Vice-Chair turned down a request to proceed by means of a telephone conference call. The Vice-Chair noted that attendance is particularly important where factual issues about the worker's emotional reactions are likely to be

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